

REMARKS

I. *Status of the Claims:*

Claims 1-24 are pending. Claims 1, 12, 13, 19, and 20 are independent claims. No claims have been amended in this response. Applicant's response to the Examiner's rejections are detailed below.

II. *Rejection under 35 USC § 103(a):*

A. Rapaport in view of Frei

Claims 1-6, 8-10, 21 and 22 are rejected under §103(a) as being unpatentable over Rapaport (US 5,444,091) in view of Frei et al., (International J. of Cosmetic Science).

Rapaport fails to teach a soya peptide. To remedy these deficiencies, Rapaport's teachings were combined with those of Frei, which according to the rejection, teaches that "soya peptide ... increase[es] skin firmness, elasticity, and tone." The Examiner has proposed "to modify the composition of Rapaport by incorporating soya peptide," "because Rapaport teaches that stretchmarks are treated by promoting the rigidity and elasticity of the skin and suggests adding additives to enhance the performance of the product; and Frei teaches the effectiveness of soya protein in improving firmness and elasticity of skin." This rejection is respectfully traversed, because the evidence and explanation of record lacks factual support in the references and the required motivation is not clear and particular to the present invention.

The Examiner has mischaracterized Rapaport as disclosing that "stretchmarks are treated by promoting the rigidity and elasticity of the skin." The Examiner erroneously relied on Rapaport's speculation that alpha hydroxy acids reduce stretch marks by (i) eliciting a hyperplastic response in the epidermis and dermis that counters the breakdown of collagen, or (ii) by stimulating the production of interfibrillary material such as glycosaminoglycans which promotes both rigidity and elasticity to the skin. See col. 4, lines 31-38. However, these proposed mechanisms for enhancing skin elasticity and rigidity are unsupported, as Rapaport is bereft of any data or working examples to support such an assertion.

The Examiner relies on an overbroad interpretation of Rapaport teachings and combines Rapaport with the Frei disclosure that “skin firmness, elasticity and tone are gradually lost with age”, to conclude that a soya peptide when used with the composition of Rapaport would be suitable for treating stretchmarks. The Examiner’s reasoning, however, fails to recognize that the physicochemical attributes of ageing skin are different from those for stretchmarks.

Moreover, it is unclear from the evidence and explanation where Frei teaches that “soya peptide ... increase[es] skin firmness, elasticity, and tone.” Although Frei describes a skin equivalent (SE) model, Frei lacks any objective measurement of skin firmness, elasticity, and tone.

Moreover, Frei’s conclusions are at best equivocal, not allowing the reader to infer much. For example, consider the following passages.

After 25 days of culture, the reconstituted epidermis showed some signs of ageing such as a reduction in the number of keratinocyte layers and a flatness of the basal membrane. However, after 15 days of soya peptide treatment, SEs present an epidermis which is morphologically closer to normal human skin than to control SEs. Keratinocyte renewal and differentiation has been strengthened by the application of soya peptide which might also delay the *in vitro* process of ageing.

On a study model which reproduces the environment in which dermal fibroblasts and keratinocytes develop *in vivo*, the significant stimulating effect of a soya peptide on extracellular matrix component synthesis and its action on epidermal differentiation have been shown clearly. This peptide is able to stimulate regeneration of metabolic activity, which may help the skin to look younger.

Frei, p. 171, 3d-4th paras. If “the application of soya peptide ... **might** ... delay the *in vitro* process of aging,” Frei, p. 171, 3d full para., last sentence (emphasis added), then the very same application **might** not. Similarly, if “[t]his peptide is able to stimulate regeneration of metabolic activity, which **may** help the skin to look younger,” Frei, p. 171, 4th full para., last sentence (emphasis added), then again, it **may** not. As a result, the evidence and explanation fail to support that “soya peptide ... increase[es] skin firmness, elasticity, and tone.”

Additionally, according to Frei, “no conclusion could be drawn concerning the way the soya peptide acts in this SE model.”

Although a significant protective effect of the epidermis in this SE model has been demonstrated in another study [25], because of its low molecular weight, the tested soya peptide may cross the epidermal barrier (*ex vivo* percutaneous absorption study and *in vivo* study, N. Abdul Malak and E. Perrier, unpublished paper). In addition no conclusion could also be drawn concerning the way the soya peptide acts in this SE model.

Frei, p. 171, last sentence first full paragraph.

As a result, there is no objective reason so combine Frei's teachings with those of Rapaport, which states:

Suitable alpha hydroxy acid treatment compositions work in reducing striae distensae skin stretch marks by virtue of acids such as glycolic acid eliciting a **hyperplastic response** in the epidermis and dermis that counters the breakdown of collagen cross linking and/or stimulates the permanent production of interfibrillary material, such as glycoaminoglycans, which promote both rigidity and elasticity.

Rapaport, col. 4, ll. 31-37 (emphasis added). A **hyperplastic response** cannot be assumed from an unknown way the soya peptide acts. Nor can promoting rigidity and elasticity be inferred from equivocal statements and a lack of objective measurements.

In summary, the Examiner's motivation is not clear and particular to the presently claimed invention. Because motivation that is not clear and particular to the claimed invention smacks of hindsight, cf. Dembiczak, 175 F.3d at 999, 50 U.S.P.Q.2d at 1616, the rejection should be withdrawn.

B. Rapaport and Frei in view of Andary (US 5,719,129):

Claim 7 is rejected as obvious over Rapaport and Frei further in view of Andary. Claim 7 depends on claim 1, and incorporates all the limitations of this base claim. As mentioned above, claim 1 is patentable over Rapaport and Frei. Thus, the reasons mentioned above for claim 1, are also applicable here for claim 7. Furthermore, Andary does not remedy the deficiencies of either Rapaport or Frei alone or in combination. Thus, the three references in combination fail to teach each and every limitation of claim 7.

C. Over Rapaport and Frei further in view of Flick (Cos. And Toiletry From. 1995):

Claim 11 was rejected as obvious over Rapaport and Frei further in view of Flick. Flick does not remedy the deficiencies of Rapaport and Frei. Thus, this rejection should be withdrawn for the same reasons that the rejection over Rapaport in view of Frei should be withdrawn.

D. Rapaport in view of Quelle (DE04244418):

Claims 12-17 and 23, 24 are rejected under § 103(a) as obvious over the teachings of Rapaport in view of Quelle. Rapaport fails to teach tripeptide consisting of the amino acids glycine, histidine, and lysine. Office action, p. 5. To remedy these deficiencies, Rapaport's teachings are combined with those of Quelle, which according to the rejection, teaches that the "tripeptide Gly-His-Lys [is used] in cosmetic compositions to treat ageing skin and as radical scavenger (antioxidant)." Office action, p. 5. This rejection is respectfully traversed, because, it appears that the Examiner is merely combining individual elements (tripeptide from Quelle, and the composition of Rapaport) of these two references to arrive at the methodology of independent claims 12 and 13.

The stated motivation is "to modify the composition of Rapaport by incorporating the tripeptide Gly-His-Lys, as disclosed by Quelle, because Rapaport...suggests adding additives to enhance the performance of its product ... and Quelle teaches that the tripeptide promotes collagen synthesis and better antioxidant activity". This asserted motivation equally applies to a potentially limitless number of situations. As mentioned above the Examiner is merely indicating that the ingredient (e.g., the tripeptide) is known which is absolutely irrelevant to the obviousness of a method of use. There is no reason to believe that the tripeptide when combined with the composition of Rapaport will be effective in enhancing treatment of stretchmarks. Quelle, does not remedy the deficiencies of Rapaport. Thus, Quelle and Rapaport in combination fail to teach each and every limitation of claims 12 or 13, which are patentable. Thus, the rejection is improper and should be withdrawn.

Claims 14-17 and 23, 24 depend on claims 12 or 13 and incorporate all their limitations. The dependent claims are therefore patentable for at least the same reasons mentioned above for claims 12 and 13.

E. Over Rapaport and Quelle further in view of Flick

Claim 18 was rejected as obvious over Rapaport and Quelle further in view of Flick. The rejection should be withdrawn, because claim 18 depends from patentable claim 13, which is allowable for the reasons stated above.

F. Over Rapaport in view of Frei and Quelle

Claims 19 and 20 are rejected as obvious over Rapaport in view of Frei and Quelle. The rejection should be withdrawn, because the three references in combination do not teach each and every limitation of claims 19 and 20. For example, Rapaport does not teach soya peptide composition for treating stretchmarks. The Examiner relies on Frei to remedy this deficiency. Furthermore, the Examiner relies on Quelle to teach a tripeptide for treating or reducing the formation of stretchmarks. The same reasons mentioned above for overcoming the rejection of claim 1 apply here.

Claims 19 and 20 are patentable over the combination of the three references, and the Examiner is respectfully requested to withdraw this rejection.

CONCLUSION

Applicant believes that the present application is now in condition for allowance.
Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application. The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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